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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA  
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12                  EDWARD J. STEINER,

13                  Plaintiff,

14                  v.

15                  BRENT KEMPSTER, et al.,,

16                  Defendants.

17                  CASE NO. 3:22-cv-05526-RJB-SKV

18                  ORDER ON REFERRAL NOTICE  
19                  AND REVOKING IN FORMA  
20                  PAUPERIS STATUS

21                  This matter comes before the Court on the July 13, 2023 Referral Notice from the Ninth  
22                  Circuit Court of Appeals. Dkt. 50. The Court has considered the referral and remaining record.  
23                  It is fully advised.

24                  As is relevant here, in this case, the Plaintiff, a *pro se* prisoner, alleges that Defendant  
25                  Brent Kempster, a police officer with the La Push Police Department, used excessive force  
26                  against him contrary to his Fourth Amendment rights when detaining him on the Quileute Tribe  
27                  Reservation. Dkt. 7. The Plaintiff was granted leave to proceed *in forma pauperis* (“IFP”). Dkt.  
28                  4. On May 10, 2023, a Report and Recommendation of U.S. Magistrate Judge S. Kate Vaughan

1 was filed, recommending that the Plaintiff's case be dismissed for lack of subject matter  
2 jurisdiction and all pending motions be stricken as moot. Dkt. 44. On June 22, 2023, the Report  
3 and Recommendation was adopted over the Plaintiff's objections. Dkt. 47. The Plaintiff filed a  
4 notice of appeal of the order adopting the Report and Recommendation. Dkt. 48.

5 In the pending Referral Notice, the Ninth Circuit Court of Appeals has referred this case  
6 to this Court for the limited purpose of determining whether Plaintiff's IFP status should  
7 continue for his appeal "or whether the appeal is frivolous or taken in bad faith." Dkt. 50 (*citing*  
8 *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002)).

9 The Plaintiff's IFP status should be revoked for purposes of this appeal. As stated in the  
10 Order adopting the Report and Recommendation, the federal courts do not have jurisdiction over  
11 the Plaintiff's claims. The appeal is frivolous and the Plaintiff's IFP status should not continue.

12 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
13 to any party appearing pro se at said party's last known address.

14 Dated this 17th day of July, 2023.

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17 ROBERT J. BRYAN  
United States District Judge  
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